

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 10-10146
	)	Chapter 11
VEBLEN EAST DAIRY LIMITED	)	
PARTNERSHIP	)	CHAPTER 11 TRUSTEE'S MOTION
Tax ID/EIN 20-8870979	)	TO CONFIRM SALE OF PROPERTY
	)	SOLD AT IN-COURT AUCTION FREE AND
Debtor.	)	CLEAR OF ALL LIENS AND
	)	ENCUMBRANCES OF ANY KIND WITH
	)	PROCEEDS TO ATTACH THERETO

COMES NOW, Lee Ann Pierce, duly appointed and acting Chapter 11 Bankruptcy Trustee in the above-captioned estate and hereby moves the Court pursuant to 11 U.S.C. §363 and Bankruptcy Rules of Procedure 2002 and 6004 of the Federal Rules of Bankruptcy Procedure and applicable Local Bankruptcy Rules for a Bankruptcy Court Order confirming the Chapter 11 Trustee's sale of real property by public auction, free and clear of all liens, federal and state tax liens of any kind, judgments, encumbrances and impediments of record, including Affidavits of Possession, except for real estate taxes and that said liens, judgments, encumbrances and impediments of record shall attach to the proceeds of the sale in the same priority as they exist against the property. Said Motion is predicated upon the following:

1. Veblen East Dairy Limited Partnership, hereinafter referred to as Debtor, filed for Chapter 11 Bankruptcy on July 2, 2010.

2. Lee Ann Pierce is the duly appointed and acting Chapter 11 Bankruptcy Trustee in the above-captioned bankruptcy.

3. By motion dated September 3, 2010, the Trustee moved the Court to sell all or substantially all assets of the bankruptcy estate at an in-court auction free and clear of all liens and encumbrances of any kind with said liens and encumbrances to attach to the proceeds of the sale in the order of their priority.

4. An in-court auction was held on September 15, 2010. The highest bid was made by Vista Family Dairies, LLC for \$21,300,000.00. The bid was for \$800.00 per head per cow and \$17,300,000.00 for the facility. Whetstone Valley Dairy, LLC submitted a backup bid which was approved by the Court to be accepted by the Trustee in the event that Vista Family Dairies, LLC was not able to close on the sale. Further, the Court approved the Trustee's motion allowing for the sale of the assets to Veblen East Dairy Acquisition, LLC, the assignee of secured creditor, AgStar Financial Services, PCA and FLCA, in the event that neither Vista Family Dairies, LLC nor Whetstone Valley Dairy, LLC closed on the sale in a timely manner. The credit bid was in the amount of \$16,000,000.00 for the facility, including the real estate, plus \$800.00 per cow.

5. On September 15, 2010, following the in-court auction, the Court entered its order approving the motion to sell on the terms set forth in the motion. Said order is final and nonappealable.

6. Following the in-court auction, Vista Family Dairies, LLC applied for and received authorization from the Marshall County Zoning Board for a Conditional Use Permit which would entitle it to operate the dairy. This request was granted at the October 19, 2010 meeting of the Marshall County Zoning Board subject to Vista Family Dairies, LLC obtaining the necessary permit from the South Dakota Department of Natural Resources. On December 3, 2010, the South Dakota Department of Natural Resources agreed to give Vista Family Dairies, LLC the DENR permit required to operate the dairy.

7. On October 28, 2010, Whetstone Valley Dairy, LLC withdrew its back-up bid.

8. Despite all conditions precedent to closing having been satisfied by the Trustee, and contrary to the terms of its bid at the in-court auction, Vista Family Dairies, LLC has advised the Trustee it will not close on the sales transaction with the Trustee.

9. The Trustee is therefore moving the Court to confirm the sale to Veblen East Dairy Acquisition, LLC.

10. Included in the sale of all or substantially all assets of the bankruptcy estate was real property legally described as:

NW1/4NW1/4 exc. highway, Section 24, Township 128 North, Range 53 West of the 5th P.M.; S1/2NW1/4 exc. railroad, Section 24, Township 128 North, Range 53 West of the 5th P.M.; and N1/2SW1/4, Section 24, Township 128 North, Range 53 West of the 5th P.M.; all in Marshall County, South Dakota.

The real property was subject to certain liens, encumbrances, impediments of record and federal and state tax liens, which are described below. The Court, in its Order dated September 15, 2010, granted the Motion of Trustee for Order Authorizing Sale of All or Substantially All Assets of the Bankruptcy Estate by In-Court Auction Free and Clear of All Liens and Encumbrances of Any Kind with Proceeds to Attach Thereto which transferred said liens to the sale proceeds thus allowing the Trustee to sell the real estate free and clear of all liens listed below:

- a. Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (with future advance clause) executed by Veblen East Dairy Limited Partnership, a South Dakota Limited Partnership, to AgStar Financial Services, FLCA, 1921 Premier Drive, PO Box 4249, Mankato, MN 56002-4249, in the amount of \$13,294,150.69, due 5 years from the date of filing and thereafter for a period of 60 days unless such term is extended by the filing of an Addendum to this Mortgage; dated September 5, 2007 and recorded September 6, 2007 at 3:45 P.M. in Book 163, Page(s) 432-460.

The above referenced Mortgage was amended by Amendment to Mortgage dated May 20, 2008 and recorded May 22, 2008 at 1:00 P.M. in Book 165, Page(s) 784-788, increasing the principal amount to \$16,294,150.69.

The above referenced Mortgage was amended by Second Amendment to Mortgage dated October 24, 2008 and recorded November 6, 2008 at 11:30 A.M. in Book 168, Page(s) 462-467.

The above referenced Mortgage was amended by a Partial Assignment of Mortgage dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 365-368, increasing the principal amount to \$16,294,150.69.

The above referenced Mortgage was amended by a Third Amendment to Mortgage dated September 21, 2009 and recorded October 8, 2009 at 8:45 a.m. in Book 171, Page(s) 371-377, increasing the principal amount to \$20,894,150.69.

- b. Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (with future advance clause) executed by Veblen East Dairy Limited Partnership, a SD Limited Partnership, to AgStar Financial Services, PCA, 1921 Premier Drive, P.O. Box 4249, Mankato, MN 56002-4249, in the amount of \$9,525,000.00, due 5 years from the date of filing and thereafter for a period of 60 days unless such term is extended by the filing of

an Addendum to this Mortgage; dated September 5, 2007 and recorded September 6, 2007 at 3:45 P.M. in Book 163, Page(s) 465-494.

The above referenced Mortgage amended by Amendment to Mortgage dated May 20, 2008 and recorded May 22, 2008 at 1:00 P.M. in Book 165, Page(s) 789-793, increasing the principal amount of \$11,600,000.00.

The above referenced Mortgage was amended by Second Amendment to Mortgage dated October 24, 2008 and recorded November 6, 2008 at 11:30 A.M. in Book 168, Page(s) 468-473.

The above referenced Mortgage was amended by an Addendum to Mortgage dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 357-358, extending the lien of its Mortgage for a period of 5 years from September 1, 2009.

The above referenced Mortgage was amended by a Third Amendment to Mortgage dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 359-364, increasing the principal amount to \$17,600,000.00.

The above referenced Mortgage was amended by an Addendum to Mortgage dated October 7, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 369-370, extending the lien of its Mortgage for a period of 5 years from October 7, 2009.

The above referenced Mortgage was amended by a Fourth Amendment to Mortgage dated October 7, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 378-384, increasing the principal amount to \$18,475,855.00.

- c. Mortgage, Security Agreement and Fixture Filing Statement executed by Veblen East Dairy Limited Partnership, in favor of Capitaline Financial Services, LP, 111 Main Avenue, Brookings, SD 57006, in the amount of \$4,000,000.00, due no later than January 31, 2013; dated January 31, 2008 and recorded February 6, 2008 at 9:50 A.M. in Book 164, Page(s) 771-784.
- d. Assignment of Leases and Rents executed by Veblen East Dairy Limited Partnership to Capitaline Financial Services, LP, 111 Main Avenue, Brookings, SD 57006; dated January 31, 2008 and recorded February 6, 2008 at 9:50 A.M. in Book 164, Page(s) 785-789.
- e. UCC Financing Statement - Veblen East Dairy Limited Partnership, Debtor, to Agstar Financial Services, FLCA, Secured Party. All fixtures, including but not limited to, all feed storage and handling systems, cattle handling systems, milking systems, milk pipe and storage systems....., located on NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, 24-128-53; recorded September 6, 2007 at 3:45 P.M. in Book 163, Page(s) 461-464. (#14614)
- f. UCC Financing Statement - Veblen East Dairy Limited Partnership, Debtor, to Agstar Financial Services, PCA, Secured Party. All fixtures, including but not limited to, all feed storage and handling systems, cattle handling systems, milking systems, milk pipe and storage systems....., located on NW1/4NW1/4, S1/2NW1/4, N1/2NW1/4, 24-128-53 recorded September 6, 2007 at 3:45 P.M. in Book 163, Page(s) 495-498. (#14615)
- g. Mortgage executed by Veblen East Dairy, LLP, to AgStar Financial Services, PCA, 1921 Premier Drive, PO Box 4249, Mankato, MN 56002-4249. \$4,500,000.00, due five years from the date of filing and thereafter for a period of 60 days unless such term is extended by the filing of an addendum to this Mortgage. Dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 385-410.

- h. Third Amended and Restated Security Interest and Debt Subordination Agreement by and among AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Capitaline Financial Services, LP. Dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 411-417.
- i. Fourth Amended and Restated Security Interest and Debt Subordination Agreement by and among AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Capitaline Financial Services, LP. Dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 418-424.
- j. Security Interest and Debt Subordination Agreement by and among AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Richard Millner, individually. Dated September 21, 2009 and recorded October 8, 2009 at 8:45 A.M. in Book 171, Page(s) 425-431.
- k. Mortgage and Subordination executed by Veblen East Dairy Limited Partnership, to Ken Lyons, 11 1<sup>st</sup> ST. NE, Lidgerwood, ND 58053. \$538,432.86, due September 1, 2010. Dated August 3, 2009 and recorded October 30, 2009 at 3:15 P.M. in Book 171, Page(s) 637-640. Junior and subordinate to all Mortgages from Mortgagor to AgStar FLCA and AgStar PCA. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.
- l. Mortgage and Subordination executed by Veblen East Dairy Limited Partnership, to Tri State Financial d/b/a North Country Ethanol, 47333 104<sup>th</sup> St., Rosholt, SD 57260. \$70,000.00, due September 1, 2010. Dated August 12, 2009 and recorded November 4, 2009 at 9:50 A.M. in Book 171, Page(s) 671-674. Junior and subordinate to all Mortgages from Mortgagor to AgStar FLCA and AgStar PCA. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.
- m. Mortgage and Subordination executed by Veblen East Dairy Limited Partnership, to Ed Backer d/b/a Backer Welding, 14688 Hwy 11, Geneseo, ND 58053. \$108,000.00, due September 1, 2010. Dated July 31, 2009 and recorded November 4, 2009 at 11:05 A.M. in Book 171, Page(s) 675-678. Junior and subordinate to all Mortgages from Mortgagor to AgStar FLCA and AgStar PCA. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.
- n. Mortgage and Subordination executed by Veblen East Dairy Limited Partnership, to Loren David, 14988 93<sup>rd</sup> St. SE, Ligerwood, ND 58053. \$388,065.21, due September 1, 2010. Dated July 24, 2009 and recorded November 5, 2009 at 10:30 A.M. in Book 171, Page(s) 679-682. Junior and subordinate to all Mortgages from Mortgagor to AgStar FLCA and AgStar PCA. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.
- o. Mortgage and Subordination executed by Veblen East Dairy Limited Partnership, to Landmark Builders, Inc., PO Box 1284, Watertown, SD 57201. \$40,747.00, due September 1, 2010. Dated July 30, 2009 and recorded November 5, 2009 at 10:30 A.M. in Book 171, Page(s) 683-686. Junior and subordinate to all Mortgages from Mortgagor to AgStar FLCA and AgStar PCA. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.
- p. Mortgage executed by Veblen East Dairy Limited Partnership, to CRM Acquisitions d/b/a Consolidated Ready Mix, Inc., 1011 330<sup>th</sup> St., Bellingham, MN 56212. \$145,000.00, due September 1, 2010. Dated September 8, 2009 and recorded November 20, 2009 at 2:15

P.M. in Book 172, Page(s) 39-41. NW1/4NW1/4 exc. hwy; S1/2NW1/4 exc. railroad; N1/2SW1/4; 24-128-53.

- q. Security Interest and Debt Subordination Agreement - Between AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Viessman Leasing, Inc. Dated September 21, 2009 and recorded January 14, 2010 at 10:00 A.M. in Book 172, Page(s) 484-490. NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, 24-128-53.
- r. Security Interest and Debt Subordination Agreement – Between AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Richard Millner, individually. Entered into on October 7, 2009, to be effective September 21, 2009 and recorded January 14, 2010 at 10:00 A.M. in Book 172, Page(s) 491-497. NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, 24-128-53.
- s. Security Interest and Debt Subordination Agreement – Between AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Viessman Leasing, Inc., Entered into on October 7, 2009, to be effective September 21, 2009 and recorded January 14, 2010 at 10:00 A.M. in Book 172, Page(s) 498-504. NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, 24-128-53.
- t. Fifth Amended and Restated Security Interest and Debt Subordination Agreement - Between AgStar Financial Services, ACA, and its wholly owned subsidiary entities AgStar Financial Services, FLCA and AgStar Financial Services, PCA and Capitaline Financial Services, LP. Entered into on October 7, 2009, to be effective September 21, 2009 and recorded January 14, 2010 at 10:00 A.M. in Book 172, Page(s) 505-512. NW1/4NW1/4, S1/2NW1/4, N1/2SW1/4, 24-128-53.
- u. Mortgage executed by Veblen East Dairy Limited Partnership, to Hill Grain Farms, Inc., 44740 102<sup>nd</sup> St, Veblen, SD 57270, in the amount of \$630,483.01, due September 1, 2010, secured by above described land. Dated August 3, 2009 and recorded February 24, 2010 at 2:15 P.M. in Book 172, Page(s) 809-812.
- v. Mortgage executed by Veblen East Dairy Limited Partnership, to Doug Langager, Langager Stack Movers & Roll-Off, 12650 Dry Wood Lake Rd, Sisseton, SD 57262, the amount of \$18,340.77. Due September 1, 2010, secured by above described land. Dated July 27, 2009 and recorded April 15, 2010 at 10:40 A.M. in Book 173, Page(s) 195-198.
- w. Mortgage executed by Veblen East Dairy Limited Partnership, to Doug Langager, Langager Stack Movers & Roll-Off, 12650 Dry Wood Lake Rd, Sisseton, SD 57262, in the amount of \$257,365.19, due September 1, 2010, secured by above described land. Dated July 27, 2009 and recorded April 15, 2010 at 10:40 A.M. in Book 173, Page(s) 199-202.
- x. Subject to seller's reservation of one-half of any remaining mineral rights in favor of Verda Akre, as shown on Warranty Deed executed by Verda Akre, an unmarried woman, to Richard Millner; dated September 22, 2006 and recorded May 29, 2007 at 3:50 P.M. in Book A38, Page(s) 375-376.
- y. Subject to seller's reservation of one-half of any remaining mineral rights in favor of Richard Millner, as shown on Warranty Deed executed by Richard Millner, a married person, to Veblen East Dairy Limited Partnership; dated May 28, 2007 and recorded May 29, 2007 at 3:55 P.M. in Book A38, Page(s) 377-378.



z. UNPAID TAXES as follows:

- i. Second half of 2009 Real Estate tax due in 2010 - parcel #44.53.24.2500 - \$115,517.34 (First half '09 due '10 - \$115,517.34 - has been paid); and any subsequent taxes and/or special assessments not yet due and payable.

aa. JUDGMENTS AND OTHER LIENS as follows:

- i. Judgment against Veblen East Dairy Limited Partner, in favor of Farmers Elevator, Inc., PO Box 7, Grace City, ND 58445, in the amount of \$162,761.84, with \$28,682.04 for interest, and \$115.00 for costs, plus interest. Dated March 25, 2010 and docketed March 25, 2010 at 2:28 P.M. (43CIV10000010-01)
- ii. Judgment against Veblen East Dairy Limited Partner and etal, in favor of AgStar Financial Services, FLCA, 1921 Premier Drive, Mankato, MN 56002-4249, and AgStar Financial Services, PCA, 1921 Premier Drive, Mankato, MN 56002-4249, see file for amount. Dated March 3, 2010 and docketed March 30, 2010 at 8:01 A.M. (43CIV10000019-01)

11. The personal property of the debtor was subject to certain liens, encumbrances, and impediments of record, which are described below and are on file with the South Dakota Secretary of State. The Court, in its Order dated September 15, 2010, granted the Motion of Trustee for Order Authorizing Sale of All or Substantially All Assets of the Bankruptcy Estate by In-Court Auction Free and Clear of All Liens and Encumbrances of Any Kind with Proceeds to Attach Thereto which transferred said liens to the sale proceeds thus allowing the Trustee to sell the personal property free and clear of all the liens listed below:

Original Filing: 20101741170059 filed with the Office of the Secretary of State of South Dakota on June 23, 2010, and entered on June 23, 2010. Secured Party: NORTH CENTRAL RENTAL & LEASING, LLC. (For the rental of the following: one (1) Caterpillar 924H S/N: 0HXC01311 M009064 and all substitutions, replacements, additions, & accessions thereto, now owned or hereafter acquired and proceeds thereof.)

Original Filing: 20093571470142 filed with the Office of the Secretary of State of South Dakota on December 23, 2009, and entered on December 23, 2009. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (One (1) Caterpillar 236B2 Skid Steer Loader S/N: HEN09463 and substitutions, replacements, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof.)

Original Filing: 20093571470141 filed with the Office of the Secretary of State of South Dakota on December 23, 2009, and entered on December 23, 2009. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (One (1) Caterpillar 236B2 Skid Steer Loader S/N: HEN09462 and substitutions, replacements, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof.)

Original Filing: 20091310970017 filed with the Office of the Secretary of State of South Dakota on May 11, 2009, and entered on May 11, 2009. Secured Party: MERCHANTS CAPITAL RECOURCES INC. ((1) 2009 CAT 236B2 Skid Steer Loader, Serial# HEN09214 (Master Equipment

Lease dated March 1, 2009 – Schedule# 101337003), together with all attachments including any replacements thereof or accessions thereto.

Original Filing: 20090640970023 filed with the Office of the Secretary of State of South Dakota on March 5, 2009, and entered on March 5, 2009. Secured Party: MERCHANTS CAPITAL RESOURCES INC. ((1) 2009 CAT 236B2 Skid Loader Serial Number: HEN08679 (1) 2009 CAT 236B2 Skid Loader Serial Number: HEN08680.)

Original Filing: 20082821470141 filed with the Office of the Secretary of State of South Dakota on October 8, 2008, and entered on October 8, 2008. Secured Party: NORTHLAND CAPITAL FINANCIAL SERVICES LLC. (1 – 2009 Pterbilt 340 Truck SN: 2NPRLN9X89M782729; 1 – Feed Scale with attachments and accessories.)

Original Filing: 20082100970037 filed with the Office of the Secretary of State of South Dakota on July 28, 2008, and entered on July 28, 2008. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (One (1) Caterpillar 246C Skid Steer Loader S/N: JAY02645 and substitutions, replacement, additions, and accessions thereto, now owned or hereafter acquired and proceeds thereof.)

Original Filing: 20081430810043 filed with the Office of the Secretary of State of South Dakota on May 22, 2008, and entered on May 22, 2008. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (8-General Equipment.)

Original Filing: 20081000810044 filed with the Office of the Secretary of State of South Dakota on April 9, 2008, and entered on April 9, 2008. Secured Party: VFS LEASING CO. (8-General Equipment.)

Original Filing: 20080671010015 filed with the Office of the Secretary of State of South Dakota on March 7, 2008, and entered on March 7, 2008. Secured Party: STEARNS BANK N.A. (51-Equipment and Leases.)

Original Filing: 20080640810019 filed with the Office of the Secretary of State of South Dakota on March 4, 2008, and entered on March 4, 2008. Secured Party: VFS LEASING CO. (49-Heavy Equipment.)

Original Filing: 20080441070041 filed with the Office of the Secretary of State of South Dakota on February 13, 2008, and entered on February 13, 2008. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. Amendment Filing: 200806512100600. (One (1) new C15 Caterpillar Generator Set S/N C5E00976; One (1) new C18 Caterpillar Generator Set S/N EKW0325 and substitutions, replacements, additions, & accessions thereto, now owned or hereafter acquired, and proceeds thereof.)

Original Filing: 20080351470122 filed with the Office of the Secretary of State of South Dakota on February 4, 2008, and entered on February 4, 2008. Secured Party: CAPITALINE FINANCIAL SERVICES LP. (5301-dairy cattle in Marshall County, all; 5302-milk in Marshall County, all.)

Original Filing: 20080351370118 filed with the Office of the Secretary of State of South Dakota on February 4, 2008, and entered on February 4,

2008. Secured Party: CAPITALINE FINANCIAL SERVICES LP. (All of Debtor's right, title and interest in and to the following, in each case, as to each type of property described below, whether now owned or hereafter acquired by Debtor, wherever located, and whether now or hereafter existing or arising (collectively, the "Collateral"): (a) All accounts, goods, farm products, money, letter of credit rights, deposit accounts, equipment, inventory, fixtures, contract rights, investment property, chattel paper, documents, instruments, commercial tort claims, general intangibles (including payment intangibles), software, supporting obligations, and all other personal property, whether now owned or hereafter acquired and wherever arising or located, and all products and proceeds thereof, and all accessions, substitutions and replacements thereof; (b) All farm products, including without limitation, all: (A) livestock, born or unborn, and their young, together with all products and replacements for such livestock; (B) crops (annual or perennial) grown, growing or to be grown, and all products of such crops; (C) all feed, seed, fertilizer, chemicals, medicines and other supplies used or produced in Debtor's farming operation; and (D) products of crops or livestock in their unmanufactured states; (c) All dairy cattle, cows, heifers, calves, breeding stock, dairy feeder cattle, and milk and other products of any of the foregoing, whether in possession of Debtor or in the possession of a third party, feed, feed ingredients, supplements and additives, minerals, grain on hand, medicine, agricultural chemicals and other supplies, other commodities comprising the feed ration to be used in feeding any of the above mentioned livestock, and all veterinary medicines and supplies acquired for use in connection therewith; all right, title and interest in contracts (whether oral or written) for sale or delivery of dairy cattle or dairy products or other Collateral; (d) All contract rights, accounts receivable, checks, drafts, notes, general intangibles, payment rights or receivables under government entitlement programs, and other evidence of Debtor's right to the payment of money arising in whole or in part to or for the benefit of any Debtor from the sale of any Collateral, all right, title and interest of any Debtor in any partnership, limited liability company, joint venture, co-ownership agreement, management contract, agency agreement or other agreement or arrangement, written or oral, concerning or relating to the acquisition, ownership, feeding maintenance, care or sale of dairy cattle or dairy products or other Collateral, and any insurance proceeds to which Debtor may be entitled as a result of any loss or damage to the dairy cattle or dairy products or any other Collateral; and (e) All fixtures, all feed storage and handling systems, cattle handling systems, milking systems, milk pipe and storage systems including bulk tanks, feeders, waterers, water handling systems and medication injection systems, manure handling storing systems, dairy equipment, pens, cleaning, ventilating, lighting and heating systems, auxiliary power systems, electrical control systems with replacements, additions and similar equipment hereafter acquired.)

Original Filing: 20080280810061 filed with the Office of the Secretary of State of South Dakota on January 28, 2008, and entered on January 28, 2008. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (49-Heavy Equipment.)

Original Filing: 20073650910045 filed with the Office of the Secretary of State of South Dakota on December 31, 2007, and entered on January



2, 2008. Secured Party: DEERE CREDIT, INC. (51-Equipment and Leases.)

Original Filing: 20072970810044 filed with the Office of the Secretary of State of South Dakota on October 24, 2007, and entered on November 5, 2007. Secured Party: AGSTAR FINANCIAL SERVICES PCA. (27-Blanket Agricultural – Must include crops, livestock, and farm machinery.)

Original Filing: 20072920810019 filed with the Office of the Secretary of State of South Dakota on October 19, 2007, and entered on October 19, 2007. Secured Party: AGSTAR FINANCIAL SERVICES FLCA & PCA. (27-Blanket Agricultural – Must include crops, livestock and farm machinery.)

Original Filing: 20063311010049 filed with the Office of the Secretary of State of South Dakota on November 27, 2006, and entered on November 29, 2006. Secured Party: CATERPILLAR FINANCIAL SERVICES CORPORATION. (49-Heavy Equipment.)

12. The Trustee requests the Court to confirm the sale of the assets of the bankruptcy estate, including the above-described real property, to Veblen East Dairy Acquisition, LLC on its credit bid for the purchase price of \$16,000,000.00 plus \$800.00 per cow in accordance with the terms and conditions set forth in the Motion of Trustee for Order Authorizing Sale of All or Substantially All Assets of the Bankruptcy Estate by In-Court Auction Free and Clear of All Liens and Encumbrances of any Kind with Proceeds to Attach Thereto filed by the Trustee on September 3, 2010 (doc. 186) and approved by the Court in its Order entered September 15, 2010 (doc. 218). The Trustee further requests the Court authorize her to pay, at the time of closing, all normal expenses of sale including payment to the secured creditor, AgStar Financial Services, PCA and FLCA, or its assignee, real estate taxes, the transfer tax and any other normal real estate closing expenses necessary to effectuate the sale according to the terms set forth in the Motion of Trustee for Order Authorizing Sale of All or Substantially All Assets of the Bankruptcy Estate by In-Court Auction Free and Clear of All Liens and Encumbrances of Any Kind with Proceeds to Attach and as approved by the Court in its Order dated September 15, 2010.

13. The Trustee will make no payments for Trustee's compensation, expenses, and administrative claims until such application has been made and approved by the Bankruptcy Court after notice and hearing.

WHEREFORE, the Chapter 11 Trustee requests the Court to approve and confirm the sale to Veblen East Dairy Acquisition, LLC for the foregoing described real property and other assets listed in the Motion of Trustee for Order Authorizing Sale of All or Substantially All Assets of the Bankruptcy Estate by In-Court Auction Free and Clear of All Liens and Encumbrances of Any Kind with Proceeds to Attach and as approved by the Court in its Order dated September 15, 2010 and for such other and further relief as the Court may deem just and equitable in the premises.

Dated: December 20, 2010.

FITE & PIERCE LAW OFFICE

/s/ Lee Ann Pierce

By: Lee Ann Pierce

Chapter 11 Bankruptcy Trustee

316 Fourth Street/P.O. Box 524

Brookings, SD 57006-0524

Phone: 605/692-9415

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